Supreme Court, U.S.
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No. 06-85

In The Supreme Court of the United States

MARICOPA COUNTY SHERIFF'S OFFICE, JOE ARPAIO, THE DULY ELECTED SHERIFF OF MARICOPA COUNTY, et al.,

Petitioners,

v.

U.S. DISTRICT COURT FOR THE DISTRICT OF ARIZONA,

Respondent,

DAMIAN HART, et al.,

Real Parties in Interest.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF IN OPPOSITION OF REAL PARTIES IN INTEREST

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QUESTION PRESENTED

Whether the court of appeals erred in declining to issue a writ of mandamus to intervene in the district court's scheduling of an evidentiary hearing that the district court had already begun.

The Real Parties in Interest, a certified class of pretrial detainees incarcerated in the Maricopa County Jail (hereinafter "plaintiffs"), respectfully request that this Court deny the petition for a writ of certiorari, seeking review of the Ninth Circuit's denial of a petition for a writ of mandamus.

STATEMENT OF FACTS

This action, challenging conditions of confinement in the Maricopa County Jail, was brought pursuant to 42 U.S.C. § 1983. Plaintiffs are a certified class of pretrial detainees incarcerated in the Jail. Defendants, petitioners here, are Maricopa County Sheriff Joe Arpaio and the Maricopa County Board of Supervisors. The action seeks only injunctive and declaratory relief; no damages are sought.

The case was settled in 1995 by entry of a consent decree. *See* Pet. App. 4-34. Petitioners have moved to terminate this decree pursuant to the Prison Litigation Reform Act (PLRA), 18 U.S.C. § 3626(b).

Under Circuit precedent, an evidentiary hearing is mandatory when requested by a party in PLRA termination proceedings. *See Gilmore v. California*, 220 F.3d 987, 1008-10 (9th Cir. 2000). The purpose of such a hearing is to allow the district court to "take evidence on the current circumstances at the prison," to determine whether there are current and ongoing violations of federal rights that

would require a continuation of injunctive relief under 18 U.S.C. § 3626(b)(3). *Gilmore*, 220 F.3d at 1010.[1]

In this case, the district court scheduled an evidentiary hearing, and directed that petitioners would present their evidence first. Petitioners completed their evidentiary presentation on January 22, 2004. Plaintiffs have not yet had the opportunity to present any evidence regarding current conditions at the Jail.

Following the close of petitioners' case, the district court referred the case to a magistrate judge for resolution of discovery issues. On September 30, 2005, the magistrate judge ordered petitioners to produce certain documents to plaintiffs. Petitioners' motion for a stay of that order was granted by the district court.

The magistrate judge also directed plaintiffs to file an "omnibus motion" addressing discovery and related issues. Plaintiffs filed their omnibus motion on May 30, 2006. Although the magistrate judge's order required petitioners to respond to this motion within 30 days of its filing, petitioners' request for an extension to 105 days was granted by the district court. Petitioners' response to plaintiffs' omnibus motion is now due on September 12, 2006.

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[1] All Circuits agree that a district court has discretion to hold an evidentiary hearing on a PLRA termination motion. *See, e.g., Cason v. Seckinger*, 231 F.3d 777, 782-83 (11th Cir. 2000); *Cagle v. Hutto*, 177 F.3d 253, 258 (4th Cir. 1999).

REASONS WHY THE PETITION SHOULD BE DENIED

A party's dissatisfaction with the district court's management of its docket does not warrant the extraordinary remedy of mandamus.

In this case, the district court has already begun the evidentiary hearing on petitioners' termination motion that is required by Circuit precedent; petitioners are simply dissatisfied with the district court's scheduling of the conclusion of that hearing. Such matters are uniquely unsuited to the exceptional remedy of mandamus. "This Court repeatedly has observed that the writ of mandamus is an extraordinary remedy, to be reserved for extraordinary situations." *Gulfstream Aerospace Corp. v. Mayacamas Corp.*, 485 U.S. 271, 289 (1988). Indeed, the Court has held that "only exceptional circumstances amounting to a judicial usurpation of power will justify issuance of the writ." *Id.* (internal quotation marks omitted). "Moreover, we have held that the party seeking mandamus has the burden of showing that its right to issuance of the writ is clear and indisputable." *Id.* (internal quotation marks omitted).

Mandamus is virtually never appropriate to compel the performance of a discretionary act; rather, it is "a remedy long restricted, in the main, to situations where ministerial duties of a nondiscretionary nature are involved." *Panama Canal Co. v. Grace Line, Inc.*, 356 U.S. 309, 318 (1958) (citation omitted). "Where a matter is committed to the discretion of a district court, it cannot be said that a litigant's right to a particular result is 'clear and indisputable.'" *Will v. Calvert Fire Ins. Co.*, 437 U.S. 655, 665-66 (1978) (plurality opinion). *See also* Robert L. Stern et al., *Supreme Court Practice* 588 (8th ed. 2002)

("The Court has long refused to issue writs of mandamus or prohibition to control or reverse the discretionary acts of a lower court").

Few things are more completely committed to the sound discretion of the district court than the management of its own docket:

> No one can seriously contend that a busy federal trial judge, confronted both with competing demands on his time for matters properly within his jurisdiction and with inevitable scheduling difficulties because of the unavailability of lawyers, parties, and witnesses, is not entrusted with a wide latitude in setting his own calendar.

Will, 437 U.S. at 665.

In *Will*, this Court reversed the Seventh Circuit's issuance of a writ of mandamus directing the district court "to proceed immediately" to adjudicate a claim before it. 437 U.S. at 657. As the Court observed, "[s]o far as appears, the delay in adjudicating the . . . claim is simply a product of the normal excessive load of business in the District Court, compounded by the unfortunate consequence of making the judge a litigant in this mandamus proceeding." *Id.* at 667 (internal quotation marks omitted). The same is true in this case.

CONCLUSION

For these reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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